somewhat more generous attitude is thought to have developed under the influence of the democratizing and humanitarian movements of the last quarter of the eighteenth century. Aborigines have come to be regarded as wards of the state exercising sovereignty over them. After reviewing the development of theory as regards the relation between the state and its colonies and native tribes, the author concludes "that the power which a civilized state exercises over all its colonies and dependencies is, according to the law of nations, a power of trusteeship, and that the power of guardianship over its dependent aboriginal tribes is one of the manifestations of this general power." (P. 113.)

This whole theory impresses the reviewer, it may as well be confessed, as a bit fantastic, to say the least. It is beautiful, if true. But is it true? The analogies with trusteeship, guardianship, and agency in private law seem far-fetched. (See, for example, pp. 108, 110, 323.) The whole seems somewhat remote from the familiar facts of colonial expansion during the past century. It is questioned whether the subject ought to be regarded as a part of the law of nations in any appropriate sense of that much abused term. The author himself appears to have misgivings on this latter point, for he says that the matter is governed by the law of nations, "though not by the body of rules which apply between civilized states to which the name international law is properly applied." (P. 110.)

The reviewer wishes merely to raise these questions, for a review is certainly no place to quarrel with an author's theory. And the theory in the present instance is no more than a thread which gives color of sequence to a unique collection of materials. The selections from documentary sources which make up a large part of the book are excellent. The arrangement is original and effective. And the commentary is so well executed that it blends what might easily have been a mere digest into an essay of unusual quality. Relations between the United States and its Indian tribes, the international slave trade, the Berlin African Conference and the Congo Free State, the doctrine of intervention for humanity, and the Moroccan question are prominent among the topics considered. The author's contribution is unique in content and scholarly in execution.

EDWIN D. DICKINSON.

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COMMERCIAL LAW CASES. By Harold L. Perrin and Hugh W. Babb. New York: George H. Doran Co. 1921. Two volumes: pp. xxi, 536; xv, 414.

A reviewer's estimate of any book depends largely upon his attitude toward its purpose. The present writer confesses a vigorous prejudice in regard to the purpose and type of this book. Knowledge of law has an undeniable and most desirable cultural value. It is a splendid background for the detail affairs of life. But a cultural knowledge of law requires a broader view than is furnished by the content of "Commercial Law Cases" and would properly be sought for through a very different course of study. Whatever value this book has must be found on the practical rather than the purely cultural side. As a matter of practical, utile value, either very

much more complete knowledge of law than this type of work can give is essential, or considerably less knowledge is quite sufficient.

The mistakes made by laymen are seldom errors as to law. This follows from the fact that law is so largely the crystalization of customs and conventions which men learn unconsciously. Some time ago this writer had the pleasure of reviewing a book on Engineering Contracts. Its author started with the proposition that most litigation over contracts is due to failure of some one to foresee the disputes of fact which might arise, or his failure to express clearly his ideas and intention. The book, therefore, contained only general principles of law and suggestions as to questions of fact which engineers ought to foresee and forestall. To a laymen among engineers it seemed a valuable book, because it recognized that to a layman imagination was more necessary than law.

The Perrin and Babb book, however, undertakes to teach law as law, and not to help with questions of fact that might arise in particular lines of business. It is not in any sense a work of practical advice to laymen except as a knowledge of abstract law may be of practical use. In form it purports to be "a work for general use which combines the text-book and case-method of teaching law." The two volumes include the subjects of Contracts, Sales, Agency, Negotiable Instruments, Partnership, and Corporations. There is a table of cases and a glossary, but no index. Its treatment of the subject of "sales" seems to be typical. There are four pages of text, defining "sale," distinguishing it from certain other transactions, and setting out the Statute of Frauds. These four pages of text are followed by thirty-four pages of condensed statements of fact and of opinion from cases involving those topics. A page and a half of text discusses the subject of "Warranties," and seventeen pages of condensed cases follow. Then come two pages of text on the "Transfer of Property," and thirty-four pages of cases, followed by quotation of sections 19, 20, 33, 34, 36, 37, and 38 of the Sales Act of Massachusetts. Two pages more of text on the "Rights of the Parties" and thirty-six pages of cases complete the subject. There is a total of thirteen pages of text, including the sections from the Sales Act.

In neither form nor purpose, it may as well be said frankly, does the reviewer consider the work to be sound. As to purpose, it teaches, for instance, that contracts of sale, like other contracts, need a "consideration." Several pages discuss whether a "sale," as distinct from other transactions of related nature, requires this consideration to be on a money basis. In the case on page 278 is a casual *dictum* that a "sale" "differs from a contract of barter and exchange in this, that in the latter the price, instead of being paid in money, is paid in goods or merchandise susceptible of valuation." In the case on page 289 the decision is that an exchange of stock for land is legally a "sale" within the meaning of the statute concerned. Thus, a reader meets the conflicting statements that a consideration in terms of money is essential to a "sale" and that it is not essential, and there is nothing to instruct him as to which is correct.

Unless the reader of the book knows how to run down precedents and

to hunt out and apply analogies, he cannot use such learning. It is neither cultural nor of practical value to laymen.

Similarly, it is of some value to a layman to know that contracts for the sale of goods over a certain value must be in writing. But it seems misdirected effort for him to learn that some courts construe "sale" rather narrowly in this regard, unless he also learns where the line of distinction is drawn. There is nothing in the book from which he can either learn or deduce this. In both these instances the reader is left with a half knowledge which is not only useless; it is dangerous. Thus, the book overshoots one mark and falls short of the other.

This fault is due in large part to the pseudo case-method form of the book. The true case-method of teaching requires more time than one who does not want a working knowledge of law can usually afford to spend. It is based on two theories. One is that law is so far a science that its rules can be derived by inductive analysis of many judicial phenomena; the other, that since lawyers find the law in precedent cases, they need training in distinguishing material facts from immaterial ones, separating *dictum* from decision, and otherwise analyzing cases. Neither of these objectives is reached by "Commercial Law Cases." There are not sufficient cases presented for any induction to be possible. There is no opportunity given for the comparison and contrast of decisions and development of the common factor, which occupies so much of true case-method classroom hours, because the book offers only one case involving any one principle. The cases on sales, for instance, cover less than 132 pages as compared with 1000 pages in standard case-books on the subject. The other objective is lost because the cases are not given in the form in which a lawyer finds them. All training in analysis, all mental discipline is gone, because the authors themselves have "so summarized and abstracted (the cases) as to reduce to a minimum the tedious verbiage upon which the student ordinarily wastes time." The book has therefore no advantage over the ordinary legal text-book.

On the other hand, the ordinary text-book is preferable in this, that while it gives no material for analysis and induction, it is itself the product of analysis and induction. Unlike mere disconnected excerpts from judicial opinions, it is written for the purpose of presenting the law in a coherent, sequential manner. It can, therefore, in the same space as a book of the type under review, present very much more law, freely explained and discussed and fully exemplified.

There is a suggestion in the preface that the authors expect this explanation to be made and the necessary additional information to be imparted by instructors in the classroom. "It is too often true," says the preface, "that a text-book leaves little for the instructor to add to the material there presented, and the course thereby becomes dry and uninteresting." They have, therefore, "left large scope for the instructor's individual knowledge and point of view." "It is possible and very practicable to require no reading of the opinion of the court in many cases." It may be that this shortening of the course by omission of the judicial opinions and the interpolation of necessary information by the instructor will meet the objections raised by the reviewer. But

such additional information and explanation is not available to one who studies the book by himself.

Having thus damned the book *in toto,* it would seem hardly becoming to comment even favorably on its details. The reviewer firmly believes that the basic idea of the book is unsound and its presentation of law quite unsatisfactory in consequence. His opinion as to the selection of cases and the manner of condensing them, the relative amount of space given to each topic, and like matters would be unsympathetic and therefore best not given at all.

JOHN BARKER WAITE.

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